

Amendment No. 1 to HB2612

Farmer
Signature of Sponsor

AMEND Senate Bill No. 2167*

House Bill No. 2612

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 27, is amended by adding the following as a new part:

29-27-301. Short title.

This part is known and may be cited as the "Uniform Partition of Heirs Property Act."

29-27-302. Part definitions.

As used in this part:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual;

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant;

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual;

(4) "Determination of value" means a court order determining the fair market value of heirs property under § 29-27-306 or § 29-27-310 or adopting the valuation of the property agreed to by all cotenants;

(5) "Heirs property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:

(A) There is no agreement in a record binding all the cotenants that governs the partition of the property;

(B) One (1) or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) Any of the following applies:

(i) Twenty percent (20%) or more of the interests are held by cotenants who are relatives;

(ii) Twenty percent (20%) or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) Twenty percent (20%) or more of the cotenants are relatives;

(6) "Partition by sale" means a court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted under § 29-27-310;

(7) "Partition in kind" means the division of heirs property into physically distinct and separately titled parcels;

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this part.

29-27-303. Applicability; relation to other law.

(a) This part applies to partition actions filed on or after July 1, 2022.

(b) In an action under this chapter, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property and a cotenant seeks partition, then the property shall be partitioned under this part.

(c) This part supplements parts 1 and 2 of this chapter and, if an action is governed by this part, then this part replaces provisions of parts 1 and 2 of this chapter that are inconsistent with this part.

(d) This part is remedial in nature and shall be construed to extend to the court the discretion necessary to effectuate this part.

29-27-304. Service; notice by posting.

(a) This part does not limit or affect the method by which service of a petition in a partition action may be made.

(b) If the plaintiff in a partition action seeks notice by publication and the court determines that the property may be heirs property, then the plaintiff, no later than ten (10) days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court, the case number, and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

29-27-305. Commissioners.

If the court appoints commissioners pursuant to § 29-27-114, each commissioner, in addition to the requirements and disqualifications applicable to commissioners in § 29-27-114, must be disinterested, impartial, and not a party to or a participant in the action.

29-27-306. Determination of value.

(a) Except as otherwise provided in subsections (b) and (c), if the court determines that the property that is the subject of a partition action is heirs property, then

the court may consider the county's tax appraised value. If an objection to the tax appraisal is filed by a party within thirty (30) days of receipt of the appraisal, then the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (d).

(b) If all cotenants have agreed to the value of the property or to another method of valuation, then the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an independent appraisal is outweighed by the cost of the appraisal, then the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, then the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property, assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d), then the plaintiff shall send notice to each party with a known address no later than ten (10) days after the appraisal is filed, stating:

(1) The appraised fair market value of the property;

(2) That the appraisal is available at the clerk's office; and

(3) That a party may file with the court an objection to the appraisal no later than thirty (30) days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subsection (d), then upon motion of a party, the court shall conduct a hearing to determine the fair market value of the property no sooner than thirty (30) days after a copy of the notice of the appraisal is sent to each party under subsection (e), regardless if an objection to the appraisal is filed

under subdivision (e)(3). In addition to the court-ordered appraisal, the court may consider other evidence of value offered by a party.

(g) After a hearing under subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

29-27-307. Cotenant buyout.

(a) If any cotenant requested partition by sale, then the plaintiff shall send notice to the parties after the determination of value under § 29-27-306 that any cotenant, except a cotenant that requested partition by sale, may buy all the interests of the cotenants that requested partition by sale.

(b) No later than forty-five (45) days, or a time period as set in the court's discretion, after the notice is sent under subsection (a), any cotenant, except a cotenant that requested partition by sale, may file notice with the court and serve notice to all parties that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under § 29-27-306 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After expiration of the period in subsection (b), a party may move the court to set a hearing to determine the allocation of the interests, subject to the following rules:

(1) If only one (1) cotenant elects to buy all the interests of the cotenants that requested partition by sale, then the court shall notify all the parties of that fact at the hearing;

(2) If more than one (1) cotenant elects to buy all the interests of the cotenants that requested partition by sale, then the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total

existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant; and

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, then, at the hearing, the court shall order the plaintiff to send notice to all the parties of that fact and resolve the partition action under § 29-27-308(a) and (b).

(e) If the notice is sent to the parties under subdivision (d)(1) or (d)(2), then the court shall set a date, no sooner than sixty (60) days after the date the notice was sent, by which electing cotenants must appear and pay their apportioned price to the court. At this hearing, the following rules apply:

(1) If all electing cotenants appear before the court and timely pay their apportioned price into court, then the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to the amounts;

(2) If no electing cotenant appears before the court and timely pays its apportioned price, then the court shall resolve the partition action under § 29-27-308(a) and (b), as if the interests of the cotenants that requested partition by sale were not purchased; and

(3) If one (1) or more but not all of the electing cotenants appears before the court and fails to pay their apportioned price on time, then the court shall order the plaintiff to give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all remaining interest.

(f) At a hearing no later than twenty (20) days after the notice is given pursuant to subdivision (e)(3), or a time period as set in the court's discretion, any cotenant that

paid may elect to purchase all of the remaining interest by paying the entire price to the court. At the hearing, the following rules apply:

(1) If only one (1) cotenant pays the entire price for the remaining interest, then the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue an order reallocating the interests of all of the cotenants and disburse the amounts held by the court to the persons entitled to the amounts;

(2) If no cotenant pays the entire price for the remaining interest, then the court shall resolve the partition action under § 29-27-308(a) and (b), as if the interests of the cotenants that requested partition by sale were not purchased; and

(3) If more than one (1) cotenant pays the entire price for the remaining interest, then the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue an order reallocating all of the cotenants' interests, disburse the amounts held by the court to the persons entitled to the amounts, and refund any excess payment held by the court.

(g) No later than forty-five (45) days, or a time period as set in the court's discretion, after the notice is sent to the parties pursuant to subsection (a), any cotenant entitled to buy an interest under this section may move the court to set a hearing to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely motion under subsection (g), then the court, after a hearing, may deny the motion or authorize the requested additional sale on terms as the court determines are fair and reasonable, subject to the following limitations:

(1) A sale authorized under this subsection (h) may occur only after the purchase prices for all interests subject to sale under subsections (a)-(f) have been paid to the court and those interests have been reallocated among the cotenants as provided in subsections (a)–(f); and

(2) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under § 29-27-306.

29-27-308. Partition alternatives.

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to § 29-27-307, or if after conclusion of the buyout under § 29-27-307, a cotenant remains that has requested partition in kind, then upon motion and hearing, the court may order partition in kind unless the court, after consideration of the factors listed in § 29-27-309, finds that partition in kind will result in great prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two (2) or more parties to have their individual interests aggregated.

(b) If, at the hearing, the court does not order partition in kind under subsection (a), then the court shall order partition by sale pursuant to § 29-27-310 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If, at the hearing, the court orders partition in kind pursuant to subsection (a), then the court may require that one (1) or more cotenants pay one (1) or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, then the court may allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to § 29-27-307, a part of the property

representing the combined interests of these cotenants, as determined by the court, and this part of the property must remain undivided.

29-27-309. Considerations for partition in kind.

(a) In determining whether partition in kind would result in great prejudice to the cotenants as a group pursuant to § 29-27-308(a), the court may consider the following:

(1) Whether the heirs property practicably can be divided among the cotenants;

(2) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) Evidence of the collective duration of ownership or possession of the property by a cotenant and one (1) or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) A cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) Any other factor determined by the court to be relevant.

(b) The court shall not consider one (1) factor in subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

29-27-310. Open-market sale, sealed bids, or auction.

(a) If the court orders a sale of heirs property, then the court shall determine the method of sale that is most economically advantageous and in the best interest of the cotenants as a group. The method of sale may be an open-market sale, a sale by sealed bids, or an auction.

(b) If the court orders an open-market sale and the parties, no later than ten (10) days after the entry of the order, agree on a special commissioner or a real estate broker licensed in this state to offer the property for sale, then, upon motion, the court shall appoint the special commissioner or broker and establish a reasonable commission. If the parties do not agree on a special commissioner or broker, then, upon motion, the court shall appoint a disinterested special commissioner or real estate broker licensed in this state to offer the property for sale and establish a reasonable commission. The special commissioner or broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the special commissioner or broker appointed under subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) The special commissioner or broker shall comply with the reporting requirements in § 29-27-311; and

(2) The sale may be completed in accordance with state law other than this part.

(d) If the special commissioner or broker appointed under subsection (b) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, then the court, after a hearing, may:

(1) Approve the highest outstanding offer, if any;

(2) Redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) Order that the property be sold by sealed bids or at an auction.

(e) If the court orders a sale by sealed bids or at an auction, then the court shall set terms and conditions of the sale. If the court orders an auction, then the auction must comply with part 2 of this chapter.

(f) If a purchaser is entitled to a share of the proceeds of the sale, then the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

29-27-311. Report of open-market sale.

(a) Unless required to do so within a shorter time by part 2 of this chapter or by the court in the court's discretion, a broker appointed under § 29-27-310(b) to offer heirs property for open-market sale shall file a report with the court and serve a copy on all parties no later than seven (7) days after receiving an offer to purchase the property for at least the value determined under § 29-27-306 or § 29-27-310.

(b) The report required by subsection (a) must contain the following information:

(1) A description of the property to be sold to each buyer;

(2) The name of each buyer;

(3) The proposed purchase price;

(4) The terms and conditions of the proposed sale, including the terms of any owner financing;

(5) The amounts to be paid to lienholders;

(6) A statement of contractual or other arrangements or conditions of the broker's commission; and

(7) Other material facts relevant to the sale.

29-27-312. Uniformity of application and construction.

In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

29-27-313. Relation to electronic signatures in global and national commerce act.

This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of the notices described in Section 103(b) of that act (15 U.S.C. § 7003(b)).

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect on July 1, 2022, the public welfare requiring it.